hill, supra. 1 DILLON, MUN. CORP., Ed. 5, 194. Mandamus on the part of the bond-holder will lie to have the city carry out the terms of the law under which the fund was ordered to be set aside. *East St. Louis* v. *Amy,* 120 U. S. 600; *City of Austin* v. *Cahill, supra.* This is a right existing under contract and is independent of any equities that the bond-holder may have in the sinking fund. *City of Austin* v. *Cahill, supra.* Therefore, it is submitted, any purchasers of bonds under this issue might by mandamus compel the council to lay aside at least $4,000 every year, even after there is $75,000 in the fund. They would seem to have a contract right to the added security. This consideration scarcely seems consistent with the court's contention that there is no reason to presume that more than the charter limit will ever be appropriated to the sinking fund in question.

NEGLIGENCE—LAST CLEAR CHANCE DOCTRINE.—Plaintiff, a boy of 16, while chasing a baseball, ran across defendant's switch tracks, located near a ball park in a city and frequently crossed by the park's patrons. At the same time employees of defendant were backing a train at a rate of 6 to 10 miles an hour, without giving any warning of its approach or maintaining a lookout. Plaintiff failed to notice the train, and was compelled to grasp an iron rod on the car nearest him to save himself from being run down; he was dragged 170 feet and then fell and was injured. *Held* (LADD and WEAVER, JJ. dissenting), defendant was negligent in backing the car, but plaintiff was guilty of contributory negligence, and the defendant railroad was not liable under the last clear chance doctrine in not having a lookout on the train from the point of collision to the point of injury, because it had no actual knowledge of plaintiff's negligence. *Bourrett* v. *Chicago & N. W. Ry. Co. et al.* (Iowa 1911) 132 N. W. 973.

In unreservedly holding that actual knowledge of plaintiff's peril is essential to make a defendant liable under the "last clear chance" doctrine, the Iowa court has finally settled for itself a troublesome question, on which the state courts are not in accord. See 9 MICH. L. REV. 267; note, 55 L. R .A. 418. The decision clearly reverses the opinion of the court on a previous hearing of the same case, 121 N. W. 380. The majority opinion concludes that a different doctrine would result in making the defendant absolutely liable for its original negligence and in nullifying the doctrine of contributory negligence. See 9 MICH. L. REV. 167; 5 MICH. L. REV. 143; Note, 19 L. R. A. (N. S.) 446. The fundamental idea of the dissenting judges is that the question is basically not one depending on knowledge, but that the test is,—Has there been a breach of duty owing to the plaintiff, occurring after the contributory negligence of the plaintiff has ceased or culminated? See note, 7 L. R. A. (N. S.) 132; note 22 L. R. A. (N. S.) 200. The determination of the issue then depends on the facts and circumstances of the particular case. Whether plaintiff is a trespasser is often decisive of a railroad's breach of duty. See 1 MICH. L. REV. 233; note, 27 L. R. A. (N. S.) 379. For a concise statement of the modern English law on the subject see SALMOND, TORTS, (Ed. 2, 1910) p. 36.